IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. REGINALDO OCANO MOLINA, Appellant.	)	2 CA-CR 2006-0441 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054631

Honorable Howard Hantman, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and William Scott Simon — Phoenix
Attorneys for Appellee

Francisco León, P.C.
By Francisco León — Tucson
Attorney for Appellant

H O W A R D, Presiding Judge.

¶1 After a jury trial, appellant Reginaldo Molina was convicted of two counts of aggravated driving under the influence of an intoxicant and two counts of aggravated driving with an alcohol concentration of .08 or more. The trial court sentenced Molina to concurrent, presumptive, enhanced prison terms totaling 4.5 years. On appeal, Molina argues the court abused its discretion by failing to consider mitigating evidence when it decided what sentence to impose. Finding no abuse of discretion, we affirm.

¶2 At an aggravation/mitigation hearing, held before the court sentenced Molina, Dr. Richard Hinton testified about sexual abuse Molina said he had experienced as a child. Hinton testified that childhood sexual abuse can lead to drug and alcohol abuse later in life. Hinton opined that such abuse may have led to Molina's problems with drugs and alcohol. But, when questioned by the trial court, Hinton stated that there was no research to suggest childhood sexual abuse might lead a person to decide to drive while intoxicated and without a valid license. As we previously stated, the trial court sentenced Molina to presumptive prison terms.

¶3 We will not disturb a sentence that is within statutory limits absent a clear abuse of discretion. *State v. Cazares*, 205 Ariz. 425, ¶ 6, 72 P.3d 355, 357 (App. 2003). A trial court abuses its sentencing discretion if its decision is arbitrary or capricious, or if it "fails to conduct an adequate investigation into the facts relevant to sentencing." *State v. Fillmore*, 187 Ariz. 174, 184, 927 P.2d 1303, 1313 (App. 1996). Additionally, "'[t]he consideration of mitigating circumstances is solely within the discretion of the court.'" *State*

v. Long, 207 Ariz. 140, ¶ 41, 83 P.3d 618, 626 (App. 2004), *quoting State v. Webb*, 164 Ariz. 348, 355, 793 P.2d 105, 112 (App. 1990). Although the trial court is required to consider mitigating evidence that is presented to establish a mitigating circumstance that is expressly enumerated in A.R.S. § 13-702(D)(1)-(5), it is not required to find mitigating circumstances exist. *See id.; State v. Fatty*, 150 Ariz. 587, 592, 724 P.2d 1256, 1261 (App. 1986). If the evidence is offered to establish a mitigating circumstance not expressly enumerated in § 13-702(D)(1)-(5), the court need not even consider the evidence, though it has discretion to do so. *See* § 13-702(D)(6); *Long*, 207 Ariz. 140, ¶ 41, 83 P.3d at 626.

¶4 Molina first complains that the trial court did not make findings regarding mitigating circumstances. But, in imposing a presumptive sentence, a trial court need not specify aggravating or mitigating circumstances. *See State v. Bly*, 127 Ariz. 370, 373, 621 P.2d 279, 282 (1980); *State v. Johnson*, 210 Ariz. 438, n.1, 111 P.3d 1038, 1041 n.1 (App. 2005). Accordingly, we reject this argument.

¶5 Molina next contends that the trial court failed to consider evidence of childhood sexual abuse as a mitigating circumstance under either § 13-702(D)(2) or (D)(6). Under § 13-702(D)(2), the court may find as a mitigating circumstance that "[t]he defendant's capacity to appreciate the wrongfulness of the defendant's conduct or conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution." Section 13-702(D)(6) provides that the court may consider as a mitigating circumstance "[a]ny other factor that is relevant to the

defendant's character or background or to the nature or circumstances of the crime and that the court finds to be mitigating."[1]

¶6 Molina presented evidence that he had been the victim of sexual abuse as a child and argued that this was a mitigating circumstance. The record establishes that the trial court considered the evidence. The court questioned Dr. Hinton regarding whether there is a link between childhood abuse and a person's decision to drive while intoxicated and without a valid license. Throughout the hearing, the court emphasized the lack of any evidence of such a connection. Finally, before hearing argument from counsel, the court stated that it had considered, among other things, "historical problems." Thus, contrary to Molina's assertion, the record shows that the court did consider the evidence, which is all it was obligated to do. *See Fatty*, 150 Ariz. at 592, 724 P.2d at 1261.

¶7 Nevertheless, Molina contends the trial court took too narrow a view of the statute by "appear[ing] to accept" the state's position that a causal link was required between the childhood sexual abuse and the decision to drive while intoxicated and without a valid license. Even assuming Molina is correct that the court accepted the state's position, the court did not abuse its discretion. Under the plain language of § 13-702(D)(2), there must be evidence of some impairment of Molina's "capacity to appreciate the wrongfulness

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[1]When Molina committed the offenses, this language was in § 13-702(D)(5). In 2006, the legislature amended § 13-702, adding a mitigating circumstance and renumbering then-subsection (D)(5) as new subsection (D)(6). 2006 Ariz. Sess. Laws, ch. 104, § 1. Molina refers to the current version of the statute, and because the relevant language is the same, we will as well.

of [his] conduct or to conform [his] conduct to the requirements of law." Molina's own witness testified that there was not necessarily a connection between the sexual abuse and Molina driving while intoxicated and without a valid license. The court could reasonably find that the lack of such a connection reduced any potential mitigating effect and that the evidence was not "sufficiently substantial to call for the lesser term." § 13-702(D); *see also State v. Olmstead*, 213 Ariz. 534, ¶¶ 6-7, 145 P.3d 631, 632-33 (App. 2006) (trial court has discretion to impose presumptive sentence even when it finds mitigating circumstances but no aggravating circumstances). The trial court did not abuse its discretion.

¶8 For the foregoing reasons, we affirm Molina's convictions and sentences.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge